

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARGARET KEIPER, et al.

Plaintiff(s),

VICTOR VALLEY TRANSIT
AUTHORITY, et al.

Defendant(s).

CASE NO:
5:15-cv-00703-BRO-SP

ORDER FOR CIVIL JURY TRIAL

**SEE LAST PAGE FOR PRETRIAL
AND TRIAL DATES**

**UNLESS OTHERWISE ORDERED BY THE COURT, THE FOLLOWING
RULES SHALL APPLY:**

I. E-FILING REQUIREMENTS

Mandatory paper Chambers copies of all e-filed motion, opposition and/or reply documents must be delivered to Judge O'Connell's box, on the Spring Street floor of USDC, located at 312 N. Spring St., Los Angeles, by noon on the day after e-filing. Documents will not be considered until chambers copies are submitted.

Attached the NEF to the BACK of the chambers copy. Chambers copies delivered by Federal Express should not require the signature of the recipient.

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II.

SCHEUDLING

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A. In General

3 All motions to join other parties or to amend the pleadings shall be filed and
4 served by the cut-off date specified in the Scheduling Order and if not specified by
5 the Rules of Civil Procedure and the applicable local rules.

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B. Motions for Summary Judgment or Partial Summary Judgment

7 Motions for summary judgment or partial summary judgment shall be filed as
8 soon as practical, however, in no event later than the motion cut-off hearing date.

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C. Discovery Cut-Off

10 The Court has established a cut-off date for discovery in this action.
11 All discovery shall be complete by the discovery cut-off date specified in the
12 Scheduling Order. **This is not the date by which discovery requests must be
13 served; it is the date by which all discovery is to be completed.**

14 In an effort to provide further guidance to the parties, the Court notes the
15 following:

16 1. Depositions

17 All depositions shall be scheduled to commence sufficiently in advance of the
18 discovery cut-off date to permit their completion and to permit the deposing party
19 enough time to bring any discovery motion concerning the deposition prior to the
20 cut-off date.

21 2. Written Discovery

22 All interrogatories, requests for production of documents, and requests for
23 admission shall be served sufficiently in advance of the discovery cut-off date to
24 permit the discovering party enough time to challenge (via motion practice)
25 responses deemed to be deficient.

26 3. Discovery Motions

27 Whenever possible, the Court expects the parties to resolve discovery problems
28 among themselves in a courteous, reasonable, and professional manner. The Court

1 expects that counsel will strictly adhere to the Civility and Professional Guidelines
2 adopted by the United States District Court for the Central District of California in
3 July 1995, which can be found on the Court's website under "Attorney Information">
4 Attorney Admissions."

5 Discovery matters are referred to a United States Magistrate Judge. **Any**
6 **motion challenging the adequacy of responses to discovery must be filed**
7 **timely, and served and calendared sufficiently in advance of the discovery**
8 **cut-off date to permit the responses to be obtained before that date, if the**
9 **motion is granted.**

10 Consistent resort to the Court for guidance in discovery is unnecessary and
11 will result in the appointment of a Special Master at the joint expense of the parties
12 to resolve discovery disputes.

13 4. **Expert Discovery.** Expert discovery is to be concluded by the
14 discovery cutoff date. Accordingly, the initial disclosure of expert witnesses in full
15 compliance with the Federal Rules of Civil Procedure is ordered no later than
16 seventy (70) days before the discovery cutoff. Counter-designations of rebuttal
17 experts in full compliance with the Federal Rules of Civil procedure are to be made
18 thirty (30) days after the other party's disclosure.

19 **D. Mandatory Settlement Conference (ADR proceedings)**

20 Pursuant to Local Rule 16–15, the parties in every case must select a
21 settlement procedure. The final meeting with the parties' settlement officer must
22 take place no later than four weeks before the Final Pretrial Conference. Counsel
23 shall file a Joint Report regarding the outcome of settlement discussions, the
24 likelihood of possible further discussions and any help the Court may provide
25 with regard to settlement negotiations not later than seven (7) days after the
26 settlement conference.

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1 **III. FINAL PRE-TRIAL CONFERENCE (“PTC”)**

2 This case has been placed on calendar for a Final Pre-Trial Conference
 3 pursuant to Fed. R. Civ. P. 16 and 26. Unless excused for good cause, each party
 4 appearing in this action shall be represented at the Final Pre-Trial Conference, and
 5 all pre-trial meetings of counsel, by the attorney who is to have charge of the
 6 conduct of the trial on behalf of such party.

7 *Pro per* parties are not exempt from following Federal Rule of Civil Procedure
 8 16.

9 **STRICT COMPLIANCE WITH THE REQUIREMENT OF FED. R. CIV.**
 10 **P. 16, 26 AND LOCAL RULES ARE REQUIRED BY THE COURT.** Therefore,
 11 carefully prepared Memoranda of Contentions of Fact and Law, a Joint Witness
 12 List, and Joint Exhibit List shall be submitted to the Court. The Joint Witness List
 13 shall contain a brief statement of the testimony for each witness, **what makes the**
 14 **testimony unique** from any other witness testimony, and the time estimate for
 15 such testimony. The Joint Exhibit List shall contain any objections to authenticity
 16 and/or admissibility to the exhibit(s) and the reasons for the objections.

17 The Memoranda of Contentions of Fact and Law, Witness List, and Exhibit
 18 List are due fourteen (14) days before the Final Pre-Trial Conference. **The parties**
 19 **shall provide an electronic copy of the Memoranda of Contentions of Fact**
 20 **and Law, Witness List and Exhibit List in Microsoft Word format to the**
 21 **Judge’s Chamber’s Email at BRO_Chambers@cacd.uscourts.gov.** The
 22 **parties shall provide hyperlinks to case citations and/or evidence.**

24 **IV. FINAL PRE-TRIAL CONFERENCE ORDER (“PTCO”)**

25 The proposed PTCO shall be lodged fourteen (14) days before the PTC.
 26 Adherence to this time requirement is necessary for in-chambers preparation of the
 27 matter. The form of the proposed PTCO shall comply with Appendix A to the Local
 28 Rules and the following:

1 A. Place in “all caps” and in “bold” the separately numbered headings
2 for each category in the PTCO (e.g., “**1. THE PARTIES**” or “**7. CLAIMS AND**
3 **DEFENSES OF THE PARTIES**”).

4 B. Include a table of contents at the beginning.

5 C. In specifying the surviving pleadings under section 1, state which
6 claims or counterclaims have been dismissed or abandoned, e.g., “Plaintiff’s
7 second cause of action for breach of fiduciary duty has been dismissed.” Also, in
8 multiple party cases where not all claims or counterclaims will be prosecuted
9 against all remaining parties on the opposing side, please specify to which party
10 each claim or counterclaim is directed.

11 D. In specifying the parties’ claims and defenses under section 7, each
12 party shall closely follow the examples set forth in Appendix A of the Local Rules.

13 E. In drafting the PTCO, the court also expects that the parties will
14 attempt to agree on and set forth as many non-contested facts as possible. The
15 court will usually read the uncontested facts to the jury at the start of trial. A
16 carefully drafted and comprehensively stated stipulation of facts will reduce the
17 length of trial and increase jury understanding of the case.

18 F. In drafting the factual issues in dispute for the PTCO, the parties
19 should attempt to state issues in ultimate fact form, not in the form of evidentiary
20 issues. The issues of fact should track the elements of a claim or defense on which
21 the jury will be required to make findings.

22 G. Issues of law should state legal issues on which the court will be
23 required to rule during the trial and should not list ultimate fact issues to be
24 submitted to the trier of fact.

25 **The parties shall provide an electronic copy of the PTCO in Microsoft**

26 **Word format to the Judge’s Chambers email at:**

27 **BRO_Chambers@cacd.uscourts.gov**

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1 V. **TRIAL PREPARATION FOR JURY TRIAL**
2 **MOTIONS, INSTRUCTIONS AND EXHIBITS**

3 **A. MOTIONS IN LIMINE**

4 All motions *in limine* must be filed and served a minimum of twenty-eight (28)
5 days prior to the scheduled hearing on Motions in Limine date (typically 1 week
6 before the schedule trial date, as set forth in the attached schedule). Each motion
7 should be separately filed and numbered. All opposition documents must be filed
8 and served at least twenty-one (21) days prior to the scheduled hearing on Motions
9 in Limine date. All reply documents must be filed and served at least fourteen (14)
10 days prior to the scheduled hearing date.

11 All motions *in limine* will be ruled upon on or before the scheduled trial date.

12 **B. JURY INSTRUCTIONS/SPECIAL VERDICT FORMS**

13 Thirty-five (35) days before the hearing on Disputed Jury Instructions (as
14 set forth in the attached schedule), plaintiff shall serve plaintiff's proposed jury
15 instructions and special verdict forms on defendant. Twenty-eight (28) days before
16 the hearing, defendant shall serve on plaintiff defendant's objections to plaintiff's
17 instructions together with any additional instructions defendant intends to offer.
18 Twenty-one (21) days before the hearing, plaintiff shall serve on defendant
19 plaintiff's objections to defendant's instructions. Twenty-one (21) days before the
20 hearing, counsel are ordered to meet and confer to attempt to come to agreement
21 on the proposed jury instructions. The parties shall make every attempt to agree
22 upon the jury instructions before submitting them to the Court. It is expected that
23 counsel will agree on the substantial majority of jury instructions.

24 Fourteen (14) days before the hearing, counsel shall file with the Court a
25 JOINT set of jury instructions on which there is agreement. Defendant's counsel
26 has the burden of preparing the joint set of jury instructions. At the same time,
27 each party shall file its proposed jury instructions which are objected to by any
28 other party, accompanied by points and authorities in support of those instructions.

When the parties disagree on an instruction, the party opposing the instruction must attach a short statement (one to two paragraphs) supporting the objection, and the party submitting the instruction must attach a short reply supporting the instruction. Each statement should be on a separate page and should follow directly after the disputed instruction.

The parties ultimately must submit one document, or if the parties disagree over any proposed jury instructions, three documents. The three documents shall consist of: (1) a set of Joint Proposed Jury Instructions; (2) Plaintiff's Disputed Jury Instructions; and (3) Defendant's Disputed Jury Instructions. Any disputed Jury Instructions shall include the reasons supporting and opposing each disputed instruction in the format set forth in the previous paragraph.

The Court requires that the Jury Instructions, disputed Jury Instructions be emailed to the Courtroom Deputy Clerk at BRO_chambers@cacd.uscourts.gov.

The Court directs counsel to use the instructions from the *Manual of Model Jury Instructions for the Ninth Circuit* where applicable. Where California law is to be applied and the above instructions are not applicable, the Court prefers counsel to use the California Jury Instructions in CACI. If none of these sources is applicable, counsel are directed to use the instructions in Devitt, Blackmar and Wolff, *Federal Jury Practice and Instructions*.

Modifications of instructions from the foregoing sources (or any other form instructions) must specifically state the modification made to the original form instruction and the authority supporting the modification.

Each requested instruction shall be set forth in full; be on a separate page; be numbered; cover only one subject or principle of law; not repeat principles of law contained in any other requested instructions; and cite the authority for a source of the requested instruction. In addition to the foregoing, each party shall file with the Courtroom Deputy on the first day of trial a "clean set" of the aforesaid requested duplicate jury instructions in the following form: Each requested instruction shall

1 be set forth in full; be on a separate page with the caption “COURT’S
 2 INSTRUCTION NUMBER __”; cover only one subject or principle of law; and not
 3 repeat principles of law contained in any other requested instruction. The “clean set”
 4 shall not cite the authority for a source of the requested instruction. Counsel shall
 5 also provide the Court with an electronic copy in Microsoft Word format. The
 6 parties shall provide hyperlinks to case citations.

7 An index page shall accompany all jury instructions submitted to the Court.
 8 The index page shall indicate the following:

- 9 • the number of the instruction;
- 10 • a brief title of the instruction;
- 11 • the source of the instruction and any relevant case citation; and
- 12 • the page number of the instruction.

13 **EXAMPLE:**

<u>NO.</u>	<u>TITLE</u>	<u>SOURCE</u>	<u>PAGE NO.</u>
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15 5	Evidence for Limited Purpose	9 th Cir. 1.5	9
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16 During the trial and before argument, the Court will meet with counsel and
 17 settle the instructions. Strict adherence to time requirements is necessary for the
 18 Court to examine the submissions in advance so that there will be no delay in
 19 starting the jury trial. **Failure of counsel to strictly follow the provisions of this**
 20 **section may subject the non-complying party and/or its attorney to sanctions**
 21 **and SHALL CONSTITUTE A WAIVER OF JURY TRIAL in all civil cases.**

22 **C. TRIAL EXHIBITS**

23 Counsel are to prepare their exhibits for presentation at the trial by placing
 24 them in binders which are indexed by exhibit number with tabs or dividers on the
 25 right side. Counsel shall submit to the Court an original and one copy of the binders.
 26 The exhibits shall be in a three-ring binder labeled on the spine portion of the
 27 binder as to the volume number and contain an index of each exhibit included in
 28 the volume. Exhibits must be numbered in accordance with Fed. R. Civ. P. 16, 26

1 and the Local Rules.

2 Joint Exhibit list shall indicate which exhibits are objected to, the reason for
3 the objection, and the reason it is admissible. Failure to object will result in a
4 waiver of objection.

5 The Court requires that the Joint Exhibit List, the Joint Witness List, the
6 Statement of the Case be emailed to the Courtroom Deputy Clerk at
7 BRO_chambers@cacd.uscourts.gov, no later than the Thursday prior to the trial
8 date.

9 The Court requires that the following be submitted to the Courtroom Deputy
10 Clerk on the first day of trial:

- 11 1. The original exhibits with the Court's exhibit tags shall be stapled
12 to the front of the exhibit on the upper right-hand corner with the
13 case number, case name, and exhibit number placed on each tag.
14 Exhibit tags can be obtained from the Clerk's Office, Room G-8,
15 312 North Spring Street, Los Angeles, CA 90012.
- 16 2. One bench book with a copy of each exhibit for use by the Court,
17 tabbed with numbers as described above. (Court's exhibit tags not
18 necessary.)
- 19 3. Three (3) copies of exhibit lists.
- 20 4. Three (3) copies of witness lists in the order in which the witness
21 may be called to testify.
- 22 5. Counsel are ordered to submit a two (2) page joint statement of
23 the case twenty-eight (28) days before trial that the Court may
24 read to the prospective panel.
- 25 6. All counsel are to meet no later than ten (10) days before trial
26 and to stipulate so far as is possible as to foundation, waiver of
27 the best evidence rule, and to those exhibits which may be
28 received into evidence at the start of trial. The exhibits to be so

1 received will be noted on the copies of the exhibit lists that are
2 emailed to the Courtroom Deputy Clerk.

3 7. Counsel may, but need not, submit brief proposed voir dire
4 questions for the jury twenty-eight (28) days before the Trial.
5 The Court will conduct its own voir dire after considering any
6 proposed voir dire submitted by counsel.
7 8. Any items that have not been admitted into evidence and are left in
8 the courtroom overnight without prior approval will be discarded.
9 9. In most cases the Court will conduct its initial voir dire of fourteen
10 prospective jurors who will be seated in the jury box. Generally,
11 the Court will select seven or eight jurors.
12 10. Each side will have three peremptory challenges. If fourteen jurors
13 are seated in the box and all six peremptory challenges are
14 exercised, the remaining eight jurors will constitute the panel. If
15 fewer than six peremptory challenges are exercised, the eight jurors
16 in the lowest numbered seats will be the jury. The Court will not
17 necessarily accept a stipulation to a challenge for cause. If one or
18 more challenges for cause are accepted, and all six peremptory
19 challenges are exercised, the Court may decide to proceed with
20 six or seven jurors.

21 VI. **CONDUCT OF ATTORNEYS AND PARTIES**

22 A. **OPENING STATEMENTS, EXAMINING WITNESSES, AND**
23 **SUMMATION.**

24 1. Counsel must use the lectern for opening statements, examination
25 of witnesses, and summation.
26 2. Counsel must not consume time by writing out words, drawing
27 charts or diagrams, etc. counsel may do so in advance and explain
28 that the item was prepared earlier as ordered by the Court to save

1 time.

2 3. The Court will honor (and may establish) reasonable time estimates
3 for opening and closing arguments, examination of witnesses, etc.

4 **B. OBJECTIONS TO QUESTIONS**

5 1. Counsel may not use objections for the purpose of making a
6 speech, recapitulating testimony, or attempting to guide the witness.
7 2. When objecting, counsel must rise to state the objection and state
8 only that counsel objects and the legal ground of objection. If
9 counsel wishes to argue an objection further, counsel must ask
10 for permission to do.

11 **C. GENERAL DECORUM**

12 1. Counsel should not approach the CRD or the witness box
13 without permission. If permission is given, counsel should return
14 to the lectern when the purpose has been accomplished. Counsel
15 should not question a witness at the witness stand.
16 2. Counsel and parties should rise when addressing the Court, and
17 when the Court or the jury enters or leaves the courtroom.
18 3. Counsel should address all remarks to the court. Counsel are not
19 to address the CRD, the court reporter, persons in the audience,
20 or opposing counsel. If counsel wish to speak with opposing
21 counsel, counsel must ask permission to do so. Any request for
22 the re-reading of questions or answers shall be addressed to the
23 Court. Such request should be limited. Request may not be granted.
24 4. Counsel, should not address or refer to witnesses or parties by
25 first names alone. Young witness (under 14) may, however, be
26 addressed and referred to by first names.
27 5. Counsel must not offer a stipulation unless counsel has conferred
28 with opposing counsel and has verified that the stipulation will be

1 acceptable.

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3 6. While Court is in session, counsel must not leave counsel table to

4 confer with any personnel or witnesses in the back of the court

5 room unless permission has been granted in advance.

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7 7. Counsel should not by facial expression, nodding, or other conduct

8 exhibit any opinion, adverse or favorable, concerning any testimony

9 being given by a witness. Counsel should admonish counsel's own

10 clients and witnesses to avoid such conduct.

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12 8. Counsel should not talk to jurors at al, and should not talk to co-

13 counsel, opposing counsel, witnesses or clients where the

14 conversation can be overheard by jurors. Each counsel should

15 admonish counsel's own clients and witnesses to avoid such

16 conduct.

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18 9. Where a party has more than one lawyer, only one may conduct

19 the direct or cross-examination of a particular witness, or make

20 objections as to that witness.

21 **D. PROMPTNESS OF COUNSEL AND WITNESSES**

22 1. The Court makes every effort to begin proceedings at the time set.

23 Promptness is expected from counsel and witnesses. Once counsel

24 are engaged in trial, this trial is counsel's first priority. The Court

25 will not delay the trial or inconvenience jurors except under

26 extraordinary circumstances. The Court will advise other courts

27 that counsel are engaged in trial in this Court on request.

28

2. If a witness was on the stand at a recess, counsel must have the

witness back on the stand ready to proceed, when the court session

resumes.

3. If a witness was on the stand at adjournment, counsel must have

the adjacent to, but not on the stand, ready to proceed when the

1 court session resumes.

2 4. Counsel must notify the CDR in advance if any witness should be
3 accommodate based on a disability or for other reasons.
4 5. No presenting party may be without witnesses. If counsel has no
5 more witnesses to call and there is more than a brief delay, the
6 Court may deem that party to have rested.
7 6. The Court attempts to cooperate with professional witnesses and
8 will, except in extraordinary circumstances, accommodate them
9 by permitting them to be called out of sequence . Counsel must
10 anticipate any such possibility and discuss it with opposing
11 counsel. If there is an objection, counsel must confer with the
12 Court in advance.

13 **IT IS SO ORDERED.**



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15 Dated: September 17, 2015

16 Beverly Reid O'Connell
17 United States District Judge
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JUDGE BEVERLY REID O'CONNELL
SCHEDULE OF TRIAL AND PRETRIAL DATES

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) Estimated length: <u>7–10</u> day(s)	8:30 am				6/28/2016
Jury trial – Hearing on Motions in Limine		-1			6/20/2016
Hearing on Disputed Jury Instructions	1:30 pm	-2			6/13/2016
Pretrial Conference; Proposed Voir Dire Q.s. Lodged; file Agreed-to Statement of Case; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.	3:00 pm	-4			5/23/2016
Motions in Limine to be filed		-5			5/16/2016
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit & Witness Lists		-6			5/9/2016
Last date to file Joint Report re ADR proceeding		-7			5/2/2016
Last date to conduct ADR Conference		-8			4/25/2016
Last day for hearing motions	1:30 pm	-9			4/18/2016
Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]		-10			4/11/2016
Last date to Amend Pleadings or Add Parties					1/29/2016